UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff,	Case No. 1:20-cr-00343-SO Cleveland, Ohio
v.	Wednesday, May 19, 2021 11:09 a.m.
MUSTAFAH OMAR HAWKINS, Defendant.	

(Proceedings Held via Zoom Videoconference)

TRANSCRIPT OF CHANGE OF PLEA AND SENTENCING PROCEEDINGS

BEFORE THE HONORABLE SOLOMON OLIVER, JR.

SENIOR UNITED STATES DISTRICT JUDGE

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Proceedings recorded by mechanical stenography, transcript produced by computer-aided transcription.

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MORNING SESSION, WEDNESDAY, MAY 19, 2021

(Proceedings commenced at 11:09 a.m.)

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DEPUTY CLERK: The case before the Court carries Case Number 1:20-cr-343, *United States of America v. Mustafah O. Hawkins.*

THE COURT: All right. Good morning to everybody.

PARTICIPANTS EN MASSE: (Exchange of pleasantries.)

THE COURT: This is a hearing for two purposes: The first is for me to determine whether the defendant is entering a knowing and voluntary plea, and then the second is for the purpose that if I find that he is or has entered a knowing and voluntary plea, that we will proceed to sentencing in the case because we have a presentence report, and that has been reviewed by the parties.

We are conducting these proceedings by way of Zoom videoconference during this period where coronavirus is still posing some threat, but things are getting better.

So let me have counsel for the United States to introduce herself for the record.

MS. MAKRIDIS: Good morning, Your Honor.

Yasmine Makridis on behalf of the United States.

THE COURT: All right. And then I'll have counsel for defendant, Mustafah Omar Hawkins, to introduce himself for the record.

MR. FLEMING: Good morning, Your Honor.

11:11:51 Charles Fleming on behalf of Mr. Hawkins, who is also appearing by video.

THE COURT: All right. And then let me have counsel -- not counsel -- the pretrial probation officer to introduce himself for the record.

11:12:02 PRETRIAL SERVICES OFFICER: Good morning, Your Honor.

Christopher Woo.

THE COURT: All right. Now, the record should reflect, as Mr. Fleming said, that Mr. Hawkins is here by

11:12:12 Zoom videoconference like the rest of us.

Is that true, Mr. Hawkins?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. And, Mr. Fleming, did you talk to him about the possibility that he could wait and

11:12:22 be sentenced in the courtroom as -- after the -- some of the threats have cleared up from the coronavirus, or he could go ahead and be sentenced today by Zoom videoconference?

Did you talk about that?

MR. FLEMING: Yes, we did, Your Honor.

11:12:40 We discussed the fact that he has a right to appear in person before the Court to have both his change of plea and sentencing conducted, but that the Court is conducting these matters by videoconference because of the coronavirus pandemic. And he indicated that he is agreeable to proceed by way of video in light of that.

THE COURT: All right.

So, Mr. Hawkins, so you'll waive any right you have to come into the courtroom, and you agree to proceed by videoconference today?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right.

Now, raise your right hand. I'll have my courtroom deputy swear you in.

(Defendant sworn.)

THE COURT: Mr. Hawkins, before I can accept a plea from you, I have to satisfy myself that you know what you're doing and you're doing it voluntarily. In order for me to make that determination, I'll have to ask you some questions. None of the questions I ask you are meant to put you down as a human being. The questions I ask are asked so I can gain the information I need so I can make the determinations I have to make.

Do you understand that?

THE DEFENDANT: I do, Your Honor.

THE COURT: All right. So state your full name for the record.

THE DEFENDANT: Mustafah Omar Hawkins.

THE COURT: Okay. Are you known by any other names?

THE DEFENDANT: That would be it.

THE COURT: Okay. Do you understand, Mr. Hawkins, that you're now under oath, and that if you answer any of my questions falsely, your answers may later be used against you in another prosecution for perjury or making a false statement?

THE DEFENDANT: I do, Your Honor.

THE COURT: How old are you?

THE DEFENDANT: I'm 28, Your Honor.

THE COURT: And how far did you go in school?

THE DEFENDANT: 11th grade.

THE COURT: Okay. You have not received a GED yet, have you?

THE DEFENDANT: No, I have not.

THE COURT: Okay. But can you read?

THE DEFENDANT: Yes.

THE COURT: Can you write?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Have you been treated recently for any mental illness?

THE DEFENDANT: No, Your Honor.

THE COURT: Have you been treated recently for addictions to narcotic drugs of any kind?

THE DEFENDANT: No, Your Honor.

THE COURT: Are you today under the influence of any drug, medication, or alcoholic beverage of any kind?

THE DEFENDANT: I am not, Your Honor.

THE COURT: Now, you received a copy of the indictment in this case, didn't you?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And you understand that the indictment contains the written charges against you?

THE DEFENDANT: I do, Your Honor.

THE COURT: Have you had a chance to fully discuss those charges and your case in general with your counsel, Mr. Fleming?

THE DEFENDANT: I have, Your Honor.

THE COURT: Are you fully satisfied with the counsel, representation, and advice given to you in this case by Mr. Fleming, as your attorney?

THE DEFENDANT: Yes, I am, Your Honor.

THE COURT: All right. Now, Mr. Fleming, he's pleading to the indictment; is that right?

MR. FLEMING: That's correct, Your Honor.

THE COURT: All right. Mr. Hawkins, before you agree to plead to the indictment, you had a chance to talk with Mr. Fleming about this?

THE DEFENDANT: Yes, I have, Your Honor.

THE COURT: And you had a chance to talk with him about your case in general; is that right?

11:15:57 THE DEFENDANT: Yes, I have, Your Honor.

THE COURT: And did you have a chance to share with him any thoughts or ideas that you had about your own case?

THE DEFENDANT: I have, Your Honor.

11:16:06 THE COURT: And was he able to share with you any information that he may have received from the Government bearing on your case?

THE DEFENDANT: Yes, I have, Your Honor.

THE COURT: Okay. Now, in the final analysis,

11:16:20 Mr. Fleming can advise, but you knew that you had to be the one to make a decision as to whether you're going to enter a plea.

You understood that, right?

THE DEFENDANT: Yes, I do, Your Honor.

11:16:30 THE COURT: Okay. And you made up your mind that you wanted to enter a plea to the indictment?

THE DEFENDANT: Yes. Yes, Your Honor.

THE COURT: Has anyone made any promises to you in an effort to get you to enter a plea here?

11:16:43 THE DEFENDANT: No, they have not, Your Honor.

THE COURT: Has anyone attempted in any way to -- has anyone threatened you in any way to get you to enter a plea?

THE DEFENDANT: No, they have not, Your Honor.

11:16:55 THE COURT: Has anyone attempted in any way to force you to plead guilty in this case?

THE DEFENDANT: No, they have not, Your Honor.

THE COURT: Now, do you understand that the offense to which you wish to plead guilty is a felony, and

11:17:12 if I accept your plea and find you guilty of that offense, you may be deprived of certain valuable civil rights, such as the right to vote, the right to hold public office, the right to serve on a jury, and the right to possess any kind of firearm?

11:17:29 THE DEFENDANT: I do, Your Honor.

THE COURT: Now, we're going to talk about possible penalties for the crime to which you wish to plead guilty.

First we'll talk about the maximum possible penalties

11:17:39 for that crime. That's the most you can get.

When I talk to you about the most you could get, I'm not saying you will necessarily get the most. But because you're making a decision to enter a plea and I'm not sentencing you yet, I have to make sure you understand that

11:17:54 as well as other information.

Do you understand that?

THE DEFENDANT: I do, Your Honor.

THE COURT: But after we talk about the maximum, we're going to talk about sentencing guidelines, and that's especially important. Because we have sentencing guidelines in the federal court. They are advisory; they're not mandatory, but I still have to seriously consider the guidelines as well as other things before I arrive at a sentence. And so we'll talk about the guideline range and what you're likely to face before we move from there.

So let me turn to the Assistant U.S. Attorney here and ask her if she would put on the record, Ms. Makridis, what the maximum possible penalties are.

MS. MAKRIDIS: Certainly, Your Honor.

The potential penalties are up to five years incarceration, up to $250,000 in fines, up to three years of supervised release, and a $100 special assessment.

Thank you, Your Honor.

THE COURT: Thank you.

Mr. Fleming, do you agree that those are the maximum possible penalties?

THE DEFENDANT: I do, Your Honor.

THE COURT: Okay.

MR. FLEMING: Yes, Your Honor. I do.

THE COURT: Okay. And, Mr. Hawkins, you

understand that, that those are the maximum possible penalties; is that right?

THE DEFENDANT: I do, Your Honor.

THE COURT: Okay. Now, we have the presentence investigation report. We don't always have that when we do a change of plea, but we have it now. So we can look to that as a starting place to see what your guideline range might be.

The pretrial probation officer has indicated that he would recommend -- he has recommended that I find if you're given acceptance of responsibility, that you have what's called an offense level of 12. That's one piece of information we need to get that guideline range.

It's as if crimes are ranked. So the most serious crimes get the higher numbers. So in terms of crimes, all crimes are serious, and this is certainly a serious crime, but it's not ranked as high as some others might be ranked. And so you come out at a 12 if I were to adopt what was recommended.

Then I look at your background to see whether you have prior convictions and whether they count for purposes of determining what we call a criminal history category, because that's the other piece of information we need.

And I -- the officer has recommended that I find you have, I think, zero criminal history points. That would be a Criminal History Category I. That's the best category to be in if you're going to be in federal court being sentenced. There are six categories. VI is the highest and I is the lowest category.

11:20:39 So having those two pieces of information, offense Level 12, and Criminal History Category I, I can go to a chart in the back of the guideline manual and look at what the range would be. And the range, guideline range, at that level would be 10 and 16 months, and then there are some options there that are available in the context of that.

11:21:06 But, Mr. Fleming, is that correct, or do you agree with that?

MR. FLEMING: Yes, Your Honor. That's correct.

11:21:19 THE COURT: All right. Ms. Makridis, do you agree?

MS. MAKRIDIS: I do, Your Honor.

THE COURT: Okay. So under the guidelines, that's what you're facing. And then, of course, your counsel, Mr. Fleming, will be able to speak for you, and then you'll have a chance to speak for yourself if you wish to speak, and then I'll hear Ms. Makridis. And so I will consider the guidelines, but also everything else that's said to me.

11:21:44 Do you understand that process?

THE DEFENDANT: I do, Your Honor.

THE COURT: Now, you understand that you have a right to plead not guilty, Mr. Hawkins, and stick with a not guilty plea and go to trial in this case if that's what you want to do.

11:22:05 Do you understand that?

THE DEFENDANT: I do, Your Honor.

THE COURT: And if you decided to go to trial, you have a right to trial by jury. At that trial, you would be presumed innocent, and the Government would have to prove your guilt beyond a reasonable doubt. And you'd have the right to the assistance of counsel for your defense. You'd have the right to see and hear all of the witnesses and have them cross-examined in your defense. You'd have the right on your own part to decline to testify unless you voluntarily elected to do so because that's your constitutional right. It could not be held against you. And you'd have the right to compel the attendance of any witnesses who might testify in your favor, if there were such witnesses.

Do you understand that?

THE DEFENDANT: I do, Your Honor.

THE COURT: Do you further understand that by entering a plea of guilty here today if I accept it, that you're not going to have a trial and you will have waived or given up your right to trial as well as all those other rights associated with a trial that I've just described to you?

THE DEFENDANT: Yes, I do, Your Honor.

11:22:58 THE COURT: Now, you're charged in Count 1 with interstate communication threat. I'm not going to go through the details of what was involved here, but I would ask you, did you do what you're charged with doing in that Count 1?

11:23:21 THE DEFENDANT: I'm sorry, Your Honor?

THE COURT: Did you do what you're charged with?

THE DEFENDANT: I did, Your Honor.

THE COURT: All right. Then I'd ask 11:23:29 Ms. Makridis to make a brief representation concerning the facts the Government would be prepared to prove at trial had the case gone to trial.

MS. MAKRIDIS: Thank you, Your Honor.

And just for purposes of this hearing, I'm going to 11:23:42 not say the expletives involved in the postings.

But the general allegations are that from on or about May 31st of 2020, to on or about June 2nd of 2020, in the Northern District of Ohio, Eastern Division, Mr. Mustafah Omar Hawkins did knowingly and willfully transmit in 11:23:58 interstate and foreign commerce from Cleveland, Ohio, communications, which when viewed together, threatened to injure persons and law enforcement officers. Facebook.com public postings, which included several threats, including expletives, involving the potential bombing and throwing of Molotov cocktails in Little Italy in the Cleveland area.

Thank you, Your Honor.

THE COURT: Thank you, Counsel.

Mr. Mustafah Omar Hawkins, how do you now plead to the charge against you in Count 1 of the indictment? Guilty or not guilty?

THE DEFENDANT: Guilty.

THE COURT: It's the finding of this Court in the case of the *United States of America v. Omar* -- I'm sorry -- *Mustafah Omar Hawkins*, Case Number 1:20-cr-343, that the defendant is fully competent, capable of entering an informed plea, that he is aware of the nature of the charges, the consequences of the plea, and that his plea of guilt is a knowing and voluntary plea supported by an independent basis in fact containing each of the essential elements of the offense.

Therefore, Mr. Hawkins, I accept your plea. I find you guilty of the offense charged in Count 1 of the indictment.

We will now move forward to the sentencing.

Mr. Fleming, you received a copy of the presentence investigation report, did you not?

MR. FLEMING: I did, Your Honor.

THE COURT: And you went over that report with Mr. Hawkins?

MR. FLEMING: I did, Your Honor.

THE COURT: And there are no outstanding objections to the report; is that correct?

MR. FLEMING: No, Your Honor.

We had one suggestion as to what we thought would be appropriate to be included in the report, and it was, so we have no outstanding objections.

THE COURT: All right. Mr. Hawkins, you heard your counsel say he reviewed the report with you; is that correct?

THE DEFENDANT: It is, Your Honor.

THE COURT: All right. Ms. Makridis, did you review the report?

MS. MAKRIDIS: I did, Your Honor. Thank you.

And no objections.

THE COURT: All right. Thank you.

So I think we can move ahead fairly quickly through the first part of the sentencing.

I referred before when we're talking about the change of plea, Mr. Hawkins, to the sentencing guideline range, and so I am going to adopt what the pretrial probation officer proposed.

So we would start out with the interstate communications threat, which starts out at a 12. But because there was more than two threats, that gets -- two additional levels gets added. That gets you to an adjusted offense level of 14.

Because I find you have accepted responsibility for the crime you have committed based on the information I have reviewed, I will give you two levels off for acceptance. So that would get you down to the total offense level of 12.

And then looking at your criminal history category, you don't have any convictions that count. You've had a couple of misdemeanors before, but they don't count for purposes of the guideline range. And so you have a score of zero, Category I, and the range is 10 to 16 months.

Let me ask, Mr. Woo, in that range, what are the options?

Even without varying, are there options within that range?

PRETRIAL SERVICES OFFICER: Yes, Your Honor.

The defendant can be just sentenced to a straight term of imprisonment, or he can also be sentenced to a split sentence where at least half of the sentence must be served by imprisonment, and then the other half could be served by location monitoring or home confinement.

THE COURT: So -- yeah. So those options are there, even without a variance, but I just wanted to clarify that going in.

So with that said, the next thing we're going to do, Mr. Hawkins, is hear from your counsel, Mr. Fleming, so he can make any comments he wishes to make on your behalf.

Then after he's spoken, you have a right to speak. You're not required to say anything, but if there's something you want to say, you would speak right after Mr. Fleming. And then I would hear from Ms. Makridis. And then I think I'd be prepared to go ahead and sentence you. So that's the process we will follow.

Mr. Fleming.

MR. FLEMING: Thank you, Your Honor.

Your Honor, Mr. Hawkins, at the time that these incidents occurred where he was making these postings on Facebook, these were very racially, emotionally, and politically charged times, because this was right on the heels of the murder of George Floyd by the Minneapolis police. And as we know now, a police officer has been convicted of murder for that, and there are still pending charges federally.

So this is a young man, who like many across the country, was caught in the throws of that, was emotionally charged about it, and unfortunately, he took to Facebook to say the things that he was thinking at the time.

What we know is that he was neither ready, willing, or able to -- at least ready or able -- to back up what he was saying on Facebook, because at the time of his arrest, he had none of the things that he would have needed in order to be able to fulfill the kinds of things that he was saying on Facebook.

So I submit to the Court that this was just someone who was venting, and albeit inappropriate to do that on Facebook, and there are consequences to doing that on Facebook, that that's something that should be taken into consideration.

Now, Mr. Hawkins, I believe, was arrested on -- in early June and then was released on bond, as I understand it, in November.

Now, as Mr. Woo stated, there -- one of the options that the Court has, should the Court choose to, would be to give him a split sentence.

I would submit to the Court that at least theoretically speaking, he's already satisfied that. Because he was in jail from June to November, which is approximately five months, and then the Court was kind enough to take a chance on him and release him on bond in November.

So he's been on home confinement for the last six months -- over six months, really. Approximately six and a half months. So in total we're talking about more than 11 months between his incarceration and his time on home confinement.

11:31:02 So he's already -- if the Court were amenable to a split sentence type situation, he's already satisfied that.

So my suggestion to the Court by way of a downward variance, Your Honor, is that the Court simply place him on probation at this point for a year.

11:31:19 He's done well on supervision for the last six months. He has been employed for most of the time that he's been on supervision through a staffing agency and has maintained that employment. He has not had -- he has not had any problems in terms of testing positive for drugs or alcohol.

11:31:37 So, Your Honor, I think he's shown this Court that he's amenable to supervision. I think he's shown this Court that he's accepted responsibility. I think he's shown this Court that a period of probation for a period of one year is appropriate to deal with this situation, and we would ask

11:31:56 that the Court impose a period of probation.

We'd also ask, Your Honor, that the Court not impose a fine other than the mandatory special assessment in this case. While Mr. Hawkins is working, he's indigent, as determined by the Court, and as evidenced by the fact that

11:32:17 I've been appointed to represent him.

So those are what we would ask the Court to do, Your Honor, given the circumstances.

THE COURT: Thank you, Mr. Fleming.

Mr. Hawkins, do you wish to speak?

11:32:31 THE DEFENDANT: I don't, Your Honor.

THE COURT: All right. Ms. Makridis.

MS. MAKRIDIS: Thank you, Your Honor.

We're just respectfully requesting a guideline sentence that would involve some period of probation.

11:32:44 As the Court is aware, these are serious threats that were made via Facebook to not only law enforcement, but also to the public. Threats that involved the use of firearms and explosives, threats to burn down entire communities in the Cleveland area.

11:32:59 I understand that Mr. Hawkins was upset and that this was a difficult and emotional time, but that doesn't excuse his conduct, and this is not the way to express oneself. He caused alarm to law enforcement and forced them to divert resources to apprehending him and assessing the threat that 11:33:17 he was to the community during a time when they were doing their best to manage the situation.

So based on all those things, Your Honor, I would just respectfully request a guideline sentence.

Thank you, Your Honor.

11:33:29 THE COURT: Thank you.

Mr. Woo, help me to understand again. Is probation, is that a variance or is that -- can a guideline sentence be given that includes both probation?

PRETRIAL SERVICES OFFICER: A sentence of probation would be a variance, Your Honor, since -- if he gets credit for the five months that he's served, or if he was sentenced to five months custody, he would get credit for those five months, but he would still be placed on three years supervised release, and then to satisfy the other five months, would need to be placed on home confinement for five months.

THE COURT: Okay. I'm just trying to get, you know, what the guidelines require.

Mr. Fleming requested probation. I thought that Ms. Makridis said the guideline, but she also referred to probation.

Am I wrong about that?

MS. MAKRIDIS: No. That's correct, Your Honor.

It's my understanding from a reading of the guidelines -- and Mr. Woo can correct me if I'm wrong -- that since he did a period of home confinement as well as a period of incarceration, that if he was given time served for those things, that it would be a guideline sentence and then continued probation. But I could be wrong on my assessment of the guidelines, and I apologize for that.

Thank you, Your Honor.

THE COURT: All right. Let me -- so I'll go to Mr. Woo.

11:34:53 That's not the way I understand it works.

If I were doing a guidelines sentence and giving him the best I could do under the guideline provisions with the options that are there, then I would have to give him five months incarceration followed by five months, say, home confinement, electronic monitoring.

11:35:22

If I wanted to vary, but still give him credit for time served, I would have to -- I could give him five -- credit for the time served, five or six months. I wouldn't have to put him on home detention electronic monitoring. That would be a variance. And then he would need some period of supervised release to follow.

11:35:45

PRETRIAL SERVICES OFFICER: Yes.

THE COURT: So it wouldn't be probation, but it would be similar. But it wouldn't be probation. So that's obviously an option with a variance. It's not to require him, if he's done well on pretrial detention, to go forward.

11:35:58

I don't think he would get credit, Mr. Fleming, for the home confinement while he's out on bond. That's my --

MR. FLEMING: Your Honor.

11:36:19

THE COURT: Yeah.

MR. FLEMING: I'm sorry, Your Honor. I hope I didn't interrupt the Court.

And you're exactly right, and which is why we called -- what we called what I asked for a variance.

We know that normally in that guideline range -- I think the Court is absolutely correct.

Normally in that guideline range the lowest sentence that the Court could give would be a 10-month sentence as a split sentence, which would be five months of incarceration and followed by five months of home confinement while on supervised release because he's been given credit for incarceration.

What I'm asking the Court to do is a hybrid of that, and that's why I'm calling it a variance.

I'm asking the Court simply to take into consideration that he's already done five months of incarceration, and to take into consideration that he's already done six months on home confinement and has done well.

So taking all of that into consideration and that that's beyond what the guideline would normally require, practically speaking, that the Court can take that into consideration and vary and say, "Look, at this point, I'm just going to put him on probation."

And that's what we're asking the Court to do.

THE COURT: All right. I understand your position.

Now -- and I could do that, I think, Mr. Woo, with a variance, is that right, because I could put him on probation anyway with a variance. Whether it would be the right thing to do, if he hadn't served any time, would be a different question.

But if he came before me with a guideline range, the criminal history category he has now, and Mr. Fleming argued for probation, and obviously Ms. Makridis would argue for something else, and I made the decision that I was going to grant probation, that would be a variance -- that would be a variance; is that right?

PRETRIAL SERVICES OFFICER: Yes, Your Honor.

THE COURT: Okay.

Now, Ms. Makridis, where are you on this?

I think that in terms of practical import, you're not opposed to what Mr. Fleming says, but I don't know whether procedurally you have any comments.

MS. MAKRIDIS: No, Your Honor.

I practically am on board with what Mr. Fleming is saying, and it was just a misreading of the guidelines on my part. But I agree that probation is the appropriate action here.

Thank you, Your Honor.

THE COURT: Okay. All right. Thank you.

Okay. Mr. Hawkins, my responsibility is to impose a sentence that's sufficient, but not greater than necessary, to comply with the purposes of the statute. In doing that, I have to look at a number of things.

One is the history and characteristics of the defendant. That's you. The other is the nature and circumstances of the offense. Then I have to impose a sentence that serves as a deterrent to criminal conduct that is supposed to protect the public from further crimes by you. Also, to the extent possible, I am to provide a sentence that gives you needed educational, vocational training, and medical care in the most effective manner, and I have to look at the kinds of sentences available. And so I'm looking at all of those things.

I looked at your background because I'm allowed to look at that. Some people have rougher upbringings than others. Sometimes you can see the clear impact of that rough upbringing on their conduct in their life. And even though we're not here to let people off when they commit crimes, we can take into consideration kind of the background factors and come up with a sentence along with everything else.

It looks like to me you -- even though you might have lived in a poorer area and had some exposure to rough situations, that it wasn't as rough as some that I see.

It says you were not exposed to drugs or violence, that your mother worked. She was able to provide for you. And that she did not abuse drugs or alcohol. And so it sounds like that was a relatively positive environment.

It doesn't mean that there weren't negative things and rough things and so forth, but that's what I see.

And you dropped out of school in the 11th grade. You have always appeared to be able to get some kind of work. At least you have a fairly decent work history as I look at it. And it looks like you have some skill in the area of photography.

You need to go ahead and get your GED and get that behind you. I'll just say that as an aside.

I don't see that there are mental health problems. Alcohol seems to have been a problem. Although, you think you don't have -- you don't think you have an addiction.

You -- the nature and circumstances of the offense. It was a rough time for all of America and some people beyond America was looking at what happened here. And people were taking to the streets, and the people were taking to the streets to protest the violence they saw by police officers in that one video. It's not an indictment of all police officers. It's not an indictment of that kind. But I think we all were there seeing those videos played over and over again. And I think it was the nature of the video in this particular occasion -- the one I'm talking about is the Floyd video -- that was so -- there are a lot that can get on your nerves, but this was one that was so graphic. And so -- but having said that, I mean, you saw what we saw, but you had to act like we act.

If you had some legitimate way to protest, you had a right to do that, and you can do that. And you can speak out to say that you find things to be reprehensible or horrible or whatever. You have a right to do all of those things.

But you can't create mayhem or potentially do that, even if you couldn't carry through. And when people see that, they don't know initially whether you can carry it through or you will carry it through. But certainly, it does impact law enforcement and our society. And it's understandable that you would get some punishment for doing that.

But it's not like you should be killed or you should be thrown away, you know, or you should have to do 20 years. And I'm not excusing your conduct one bit, but we do have to take appropriate measures.

Sometimes I do have to send people away for 10 years and 20 years and longer. So it's not that we don't do that. But this is one case where I hope you learn a lesson, and that you'll come -- never come close to committing a crime again -- or a federal crime, especially this kind of thing. You now realize just how quickly you can be caught up in the law. And I'm glad you got out on bond when you did, because you could have overserved your time if you hadn't gotten out when you did. And I do have a lot defendants who have been sitting for a year or two years. Of course, their sentences are likely to be longer, and they get credit.

So I'm glad you got out. It looks like you've been working, you are working now. I think it's best if you're able to continue to do that.

And so I'm going to sentence you to a period of two years of probation. And I'm going to do it at the request of your counsel because he asked for probation, and since what you effectively would be serving or have served would be the same anyway, I'll call it that.

But the reason I'm willing to do it is for the reasons that Mr. Fleming stated. You got already five or six months, that if I gave you a prison sentence you would be given credit for, and if I gave you that credit, you will have satisfied the guideline range if I would give you five months more on home confinement with electronic monitoring.

It appears to me that -- well, from all the information I have, that you've done that five or six months in waiting before you were on bond, and that you have since that time been on home confinement, electronic monitoring without problems as far as have been reported to me.

Mr. Woo will correct me if I'm wrong.

PRETRIAL SERVICES OFFICER: No, Your Honor. There's been no violations of his home confinement.

THE COURT: All right. So that's what I'm going to do.

But I'm telling you, under the right circumstances people deserve another chance, and so I hope you -- I hope you know how close you came here to have been involved in something that could have sent you away for a very long period of time. So you can't do this.

So I'm going to do that. I'm going to give that sentence considering all of the facts, all of the facts.

MR. FLEMING: Thank you, Your Honor.

THE COURT: So pursuant to the Sentencing Reform Act of 1984, it is the judgment of this Court that defendant Mustafah Omar Hawkins hereby is sentenced to a two-year term of probation.

Upon -- let's see. Strike that.

So you shall report in person to the U.S. pretrial service and probation office in the district to which you are released within 72 hours.

I've determined you're not able to pay a fine, so I will waive that. You are required to pay a special assessment of $100, which is due immediately. If you're not able to pay that now, you'll have to start paying on that through the Bureau of Prisons Inmate Financial Responsibility Program at no less than 10 percent of your gross monthly income.

11:47:54

When you're on probation, you must comply with the mandatory and standard conditions that have been adopted of this Court and are set forth in Part D of the presentence investigation report.

11:48:03 You must comply with the following additional conditions: You must refrain from any unlawful use of a controlled substance, submit to one drug test within 15 days of release from imprisonment and to at least two periodic drug tests thereafter as determined by the Court.

11:48:19 I'm going to require you to participate in an approved program of substance abuse testing. Now, depending on the outcome of the test, you may be required to engage in outpatient or inpatient substance abuse treatment as directed by the supervising officer.

11:48:34 So I don't know whether you'll be -- have to have a program or not. And you must abide by the rules of the treatment program if you have a treatment program. A probation officer will supervise your participation in the program. And you can't obstruct or attempt to obstruct or tamper in any fashion with the efficiency and accuracy of

11:48:51

any prohibited substance testing.

I'm going to put an alcohol restriction on you. That actually seemed to be more serious, as I read it, than the drug one. And sometimes these restrictions can be changed, but right now it appears that we need to start you on one. And so I'm going to restrict you on that.

When you're on probation, probation officers can search your property, person, house, residence, vehicle, papers, and computers, other electronic communications, data storage devices, or media, under some circumstances.

Now, those circumstances require that they have reasonable suspicion that you have violated a condition of supervision. And they have to set out the areas to be searched which contain evidence of the violation. And they must conduct any search that they conduct at a reasonable time and in a reasonable manner.

In other words, they just can't come to your house for no reason. They have to have that reason -- have a reason. On your part, failure to submit to a search may be grounds for revocation or release. You must warn any of the occupants of the premises that you occupy that they may be subject to a search pursuant to this condition.

That's the sentence I intend to impose.

Before I finalize that sentence, though, Mr. Fleming, any objections or anything I've overlooked?

MR. FLEMING: Your Honor, I would just simply ask the Court -- and we'll abide by whatever the Court's desire is -- but I would ask the Court to consider making the alcohol restriction simply to not the excessive use of alcohol.

He's been on supervision now for about six and a half months. He has not tested positive for any elicit substances or alcohol use. So I think he's shown everyone that he can abstain and keep it within reasonable limits.

So I think, if the Court is amenable, I think it would be reasonable at this point to put him on a no excessive alcohol use limitation, and obviously, if that's -- if we see violations of that, then obviously the Court can always go back to no use at all.

THE COURT: All right. Mr. Woo, I was looking at the recommendation, but in terms of drugs, I wasn't sure that I saw that that appeared to be a current problem.

Am I right about that?

PRETRIAL SERVICES OFFICER: That's correct, Your Honor.

The substance abuse treatment and testing condition is kind of like a catchall to include alcohol abuse, which is why it was included.

However, I have no objection to an alcohol restriction as far as no excessive use as opposed to a complete no alcohol condition.

THE COURT: How about that, Ms. Makridis?

MS. MAKRIDIS: Your Honor, it would be my preference that it be no alcohol use at all. I think that there was some conversation that I had prior to the case being indicted where Mr. Hawkins had been terminated from some positions based on his alcohol consumption.

I think that he's on a good path now, and I'd hate to see him deviate from that. So I think that the -- the Government's position would be that no alcohol would be the preference.

Thank you, Your Honor.

THE COURT: All right. I'm always careful here. I have put on no alcohol restrictions on some defendants. I am caught kind of going both ways on these. One reason I worry is I don't want to set a person up for absolute failure. But at the same time, I do worry about Mr. Hawkins because I saw something in the presentence report, as you suggested, which showed that he definitely had a problem, a major problem, on some occasions in having alcohol, and so that's what gave me concern. You know, but I'm very careful when I put a restriction on because I don't -- you know, I don't want to become more entangled in personal lives than we should.

I'll put on the no excessive alcohol, but I guess I'd like the pretrial probation -- I'll leave the drug restriction in place, you know, and you can determine whether he needs any testing or so forth. And I guess my request would be that if on the first occasion, if any, that he has a problem with alcohol that you see -- detect anything there, don't wait. Bring that to my attention.

I know sometimes pretrial probation officers are working with -- I know they work with human beings and there are problems and they try to work them out before they get to the Court.

But I would say if there's something you can put in your system to say, "Judge says if there's any sign that there's a problem here, he wants to know on the first instance."

PRETRIAL SERVICES OFFICER: Yes, Your Honor. I can do that.

THE COURT: Ms. Makridis, I understand your point, and I'm just -- you know, I'm about almost 50/50 on that one. So I leaned the other way on it. But I appreciate what you say. I saw what you saw.

All right. Any objections, Ms. Makridis, to the sentence or anything I've overlooked?

MS. MAKRIDIS: No, Your Honor. Thank you.

THE COURT: All right. Then that's the sentence I am going to impose, the one that I indicated that

I would.

Mr. Hawkins, you have a right to appeal from the judgment of conviction. As a judge, I don't give you any assessment of whether I think you have good grounds or bad grounds. Judges don't do that. They can't. My responsibility is simply to make sure you know that you if wanted to appeal you'd have to file what's called a notice of appeal within 14 days of the judgment of conviction.

Do you understand that?

THE DEFENDANT: I do, Your Honor.

THE COURT: If you wanted to appeal and you could not afford counsel, I would appoint counsel for you.

Do you understand that?

THE DEFENDANT: I do, Your Honor.

THE COURT: And, Mr. Fleming, I'd ask you to speak with Mr. Hawkins to see whether or not there's anything he wishes to appeal.

If he does, I'd ask you to file the notice of appeal for him. We can always determine later whether you'd be the right person to represent him throughout that appeal.

Would you accept that responsibility?

MR. FLEMING: Yes, Your Honor.

THE COURT: All right. Mr. Hawkins, people make mistakes. Some are larger than others, and some are harder to recover from.

Now, you've got a felony criminal record, and that always makes it harder for a person, too, sometimes employment and other kinds of things.

But there's no reason why, if you approach this responsibly, that you cannot recover from this and move forward with a productive life.

But just bear in mind, there's some serious consequences to committing crimes, and especially when you are looking at some of these federal crimes having to do with making threats, and there are reasons why there are these serious penalties.

So learn how to do it the way the rest of us do it. Open your mouth wide if you've got something to say, but say it appropriately. And if you want to get out there in the street and do a lawful march, then by all means get out there and do that. You see what effect it can have. It did have a lot of an effect during the course of those demonstrations. And it's not a new way of protesting. It happened before. And that's what you have to do. You got to stay inbounds. And that's all I have to say.

That's all I have.

MR. FLEMING: Thank you, Your Honor.

THE COURT: All right.

THE DEFENDANT: Thank you.

MS. MAKRIDIS: Thank you, Your Honor.

THE COURT: All right.

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(Proceedings adjourned at 11:57 a.m.)

C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Donnalee Cotone ______________ *16th of August, 2021*
DONNALEE COTONE, RMR, CRR, CRC DATE
Realtime Systems Administrator